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Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM 1972

No. 72-335

WALKER BECK LeFLORE,

Petitioner,

versus

STATE OF ALABAMA, EX REL.
CASSIE BELLE MOORE,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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IN THE SUPREME COURT OF THE
UNITED STATES
OCTOBER TERM, 1972

No. 72-335

WALKER BECK LeFLORE,

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VS.

STATE OF ALABAMA, EX REL.
CASSIE BELLE MOORE,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

OPINIONS BELOW

The opinion (written by Justice Harwood) of the Alabama Supreme Court in LeFlore v. State of Alabama, ex rel. Cassie Belle Moore, which was docketed there as 1 Div. 714, is reported in 288 Ala. 310, 260 So.2d 581. It is also set forth in petitioner's Appendix B (II), beginning on page 14.

The opinion in the related case (written by Justice Maddox), bearing docket No. 1 Div. 713, in the Supreme Court of Alabama (Moore v. LeFlore), is reported in 288 Ala. _____,

260 So.2d 585. The latter is the mandamus case and the opinion is set forth in petitioner's Appendix B (III), beginning on page 22.

Both said opinions and judgments were rendered by the Supreme Court of Alabama on April 6, 1972.

Thereafter and on April 18, 1972, petitioner, Dr. Walker Beck LeFlore, filed a motion in the Juvenile Division of the Circuit Court of Mobile County, Alabama, for a new trial of the issue of paternity of the twin children born of Cassie Moore. The State of Alabama filed a motion to strike Dr. LeFlore's motion for new trial, and on May 17, 1972, Judge Strickland, Judge of the Juvenile Division of the Circuit Court of Mobile County, took the motion to strike and the motion for new trial under submission. On May 29, 1972, Judge Strickland denied the motion to strike and granted the motion for new trial. That order of May 29, 1972, is printed in Appendix A(I), infra, p. 18.

A petition for prohibition and mandamus was filed in the Supreme Court of Alabama by the State, the purpose of that petition being to require Judge Strickland to set aside the order granting the new trial. That case is docketed in the Supreme Court of Alabama as 1 Div. 741, and on June 29, 1972, the Supreme Court of Alabama issued the rule nisi ordering Judge Strickland to set aside the order of May 29, 1972, granting the new trial or appear within 30 days thereafter and show cause why he should not be required to do so. The order granting the rule nisi has not been officially reported, but it is printed in Appendix A (II), infra, p. 19.

Judge Strickland answered the rule nisi. Judge Strickland was represented by J. D. Quinlivan, Jr., Esquire, Mobile, Alabama, one of the attorneys who represented Dr. LeFlore in the other Alabama appellate courts in connection with this case. A copy of said answer is printed in Appendix A (III), infra. p. 21.

The Supreme Court of Alabama has not issued a final peremptory writ of prohibition or mandamus in case No. 1 Div. 741, and that case is still pending before the Supreme Court of Alabama.

JURISDICTION

The judgment of the Alabama Supreme Court in case Nos. 1 Div. 714 and 1 Div. 713 were both rendered on April 6, 1972. (The petition for certiorari seeks a review of the decision rendered in 1 Div. 714.)

On July 5, 1972, Mr. Justice Powell granted an application to extend the time for filing the petition for writ of certiorari until September 3, 1972. Within that time the petition was filed in this Court. However, there has been no final judgment rendered by the Supreme Court of Alabama either granting or denying the peremptory writ of prohibition or mandamus in case No. 1 Div. 741, and that case is still pending before the Supreme Court of Alabama. The latter case is closely connected with the judgment rendered on April 6, 1972, by the Supreme Court of Alabama in case No. 1 Div. 714. A denial by the Supreme Court of Alabama of the peremptory writ of prohibition and mandamus would make the matters involved in the present petition for certiorari moot.

The only time Dr. LeFlore raised a constitutional issue was at the hearing (R.p.135) before the Circuit Court of Mobile County which resulted in the judgment dismissing the appeal from the Juvenile Court (R.p.139; petitioner's Appendix B(I), p. 13).

As counsel for petitioner admits (Petition, p.7) no constitutional or federal issue was raised on the appeal to the Supreme Court of Alabama (or in connection with any of the appellate proceedings involving any of the cases, 1 Div. 713, 714 or 741).

QUESTIONS PRESENTED

1. Whether a putative father represented by counsel at all stages in a paternity case is denied rights protected by the Fourteenth Amendment when a court of competent jurisdiction, after hearing, adjudged him to be the father, and the State Supreme Court affirms the judgment of the Circuit Court, rendered after hearing, dismissing his attempted appeal, on the ground that he had failed to perfect the appeal in the time and manner provided by statute.

2. Whether the Supreme Court has jurisdiction to review a judgment of a state supreme court affirming a state circuit court judgment dismissing an appeal of a state juvenile court judgment establishing paternity where no Federal question was passed upon by the state circuit court and no Federal question was assigned as error or otherwise raised in or decided by the state supreme court.

3. Whether the Supreme Court will review such state court judgment, where, after rendition, but before the petition for certiorari was filed, the putative father on his motion

was granted a new trial by the state juvenile court, which, if upheld, would make the question raised by the petition moot, and the question whether such juvenile court had authority to grant a new trial was undecided and pending before the state supreme court when the petition for certiorari was filed.

STATEMENT OF THE CASE

In the first paragraph of petitioner's Statement of the Case (P.p.3) petitioner describes himself as a black physician.

At no point, in all the numerous proceedings below, was the race of any of the parties mentioned. There has never been any contention that there was any discrimination on account of race. Furthermore, Cassie Moore, the mother, and the twin children involved are also black.

We trust there will be no further reference to race, because race is not an issue.

Cassie Moore, a Mobile County, Alabama resident and a registered nurse at St. Martin de Porres Hospital, on August 21, 1969, made affidavit before one of the officers of the Juvenile Court of Mobile County (R.p.9) that illegitimate twin children, Collette and Claudia Moore, were born of her on July 29, 1968, and that petitioner, Dr. Walker Beck LeFlore, who practiced at the same hospital, was the father (R.pp.4-8).

The paternity proceeding came on for hearing before the Honorable James T. Strickland, Judge of the Juvenile Court of Mobile County. Both sides were represented by counsel throughout the proceedings (R.pp.14, 64). Testimony was begun on August 22, 1969

(R.p.13), resumed at an adjourned hearing, and concluded on June 30, 1970 (R.p.64). The testimony on the issue of paternity was taken before a court reporter, reduced to writing (R.pp.13,74) and filed in the Juvenile Court on July 16, 1970 (R.pp.7,106). The testimony covers 92 pages of the record (R. pp.14-106) which has been certified here at the request of petitioner.

The evidence adduced at the hearing showed that one of the children suffers from periodic convulsions and seizures; the other is a spastic with a microcephalic head, unable to walk, talk or crawl, having suffered permanent brain damage (R.pp.17,68-69,71). At that hearing Dr. LeFlore admitted having visited Cassie Moore at her apartment (R.p.100) and having had sexual intercourse with her for several months prior to the birth of the children (although he could not recall which months) (R.pp.91,92,94-95,103).

On June 30, 1970, at the conclusion of the hearing Judge Strickland adjudged Dr. LeFlore to be the father of the children (R.p. 8; P.p.15).

By certificate addressed to the Circuit Court of Mobile County, in Equity, Norman J. Gale, Clerk in the Juvenile Court of Mobile County, certified the correctness of the original Juvenile Court file (R.pp.1-2) and "all related documents pertaining to this cause". (R.p.2). Two notices of appeal, each signed by Dr. LeFlore's attorney, were included in the Juvenile Court file certified by Mr. Gale (R.pp.3,4).

Subsequently, the complete Juvenile Court file, including the two notices of appeal, was

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transferred from the Juvenile Court to the Circuit Court, and then became a part of the Circuit Court file (R.pp.127-128,133).

The statute pertaining to paternity proceedings in Alabama is Act No. 295, 1961 Acts of Alabama, and is codified in Title 27, §§12(1)-(9) of the 1940 Code of Alabama, as Recompiled in 1958 (Pocket Part). § 12(6) (P.Appendix, p.10) provides that the State or the reputed father may appeal from a final judgment rendered by the Juvenile Court by filing written notice of such appeal within 10 days after rendition of the judgment in both the Juvenile Court and the Circuit Court to which the appeal is taken. Appeals from the Juvenile Court of Mobile County lie to the Circuit Court of Mobile County, in Equity, Domestic Relations Division, by virtue of § 7, Act No. 374, 1965 Acts of Alabama.

On August 21, 1970, the State of Alabama filed in the Circuit Court, in Equity, a sworn motion to dismiss the appeal on the ground that the notice of appeal was not filed in the Circuit Court within 10 days after the rendition of the judgment of June 30, 1970 (R.pp. 108-111).

The issue before the Honorable Ferrill McRae (who at that time was the judge of the Domestic Relations Division of the Circuit Court of Mobile County, in Equity) on the motion to dismiss the appeal was whether the notice of appeal had been filed in the Circuit Court on July 2 or July 16 (R.pp.131-133,136).

At the hearing Judge McRae had before him and took judicial notice of the Circuit Court file, which contained the complete Juvenile Court file which had been transferred from the Juvenile Court to the Circuit Court

(R.p.131). The Juvenile Court file was shown by the Circuit Court records to have been received and filed in the Circuit Court on July 16, 1970 (R.pp.127-128), and Dr. LeFlore's counsel conceded the Circuit Court did not receive the Juvenile Court file until July 16 (R.p.133), more than 10 days after the Juvenile Court judgment was rendered (June 30) R.p.8).

In Alabama the Register in Equity is tantamount to the Clerk on the law side of the Circuit Court. By virtue of Title 13, §214, Code of Alabama of 1940, as Recompiled in 1958, the Register is under a duty to endorse all papers filed in any cause with the true date on which they were filed. There is a presumption (which is evidence in and of itself) that the Register has performed that duty.

The only date according to the Circuit Court records as to when the notice of appeal was filed in the Circuit Court is July 16, when the complete Juvenile Court file was received in the Circuit Court (R.pp.127-128).

The position of counsel for the State and Cassie Moore on that hearing was that, according to the court records, the notice of appeal was never filed by Dr. LeFlore, his counsel or any of their employees in the Circuit Court, but it only reached the Circuit Court on July 16 for the reason that it had been filed with the other notice of appeal in the Juvenile Court.

Dr. LeFlore's counsel contended that his receptionist had filed one of the notices in the Juvenile Court and one in the Circuit Court on July 2, but the only evidence to support that claim consisted of the affidavits of his secretary and receptionist (P.pp.11-12, 17-18).

Neither of the notices of appeal bears a filing date, except that the complete Juvenile Court file was marked received in the Circuit Court on July 16 (R.p.133). Dr. LeFlore's counsel also acknowledged that both notices of appeal were "folded thusly" (R.p.123) "right together in this file" (R.p.127).

The factual issue (whether the notice of appeal had been filed in the Circuit Court within 10 days from June 30) was decided by the Circuit Court without a jury.

The hearing before Judge McRae began on November 10, 1970 (R.p.120), was recessed and reconvened on December 1, 1970, at which time the case was taken under submission (R.p.139). The proceedings were taken down by a court reporter, transcribed and comprise 16 pages of the record (R.pp.121-137). Every facet of the case was discussed and, on the conflicting evidence presented, Judge McRae rendered the judgment on January 27, 1971, dismissing the appeal, holding that the appeal was not properly or timely filed (R.p.139; P.pp.13-14).

Dr. LeFlore, through his attorney, filed a motion to modify the judgment of January 27 (R.pp.141-142), then filed an amended motion to modify (R.pp.143-144), to which the State and Cassie Moore filed an answer (R.pp.146-148) Judge McRae on March 24, 1971, after considering the same, denied the motion to modify (R.p.149).

On April 6, 1972, the Alabama Supreme Court affirmed the Circuit Court judgment of January 27, 1971. Please see opinion of Supreme Court in 1 Div. 714 (P. Appendix, pp.14-22).

On appeal to the Alabama Supreme Court

only two assignments of error were argued and neither raised a Federal question. The only reference to any Federal question in any of the proceedings was made by Dr. LeFlore's counsel when the motion to dismiss the appeal was argued before Judge McRae (R.p.135). There was no ruling on that question and it was not again insisted upon. It was not assigned as error in, much less decided by, the Alabama Supreme Court whose judgment petitioner seeks to review.

Subsequently, but before the petition for certiorari was filed in this Court, Dr. LeFlore filed a motion for new trial to retry the issue of paternity in the Juvenile Court of Mobile County. The Juvenile Court granted the motion for new trial. The State of Alabama, on the relation of Cassie Moore, then filed a petition for writ of prohibition and mandamus in the Alabama Supreme Court (1 Div. 741), and that court issued the Rule Nisi, ordering Judge Strickland to show cause why he should not set aside the order granting the new trial. At the time the petition for certiorari was filed the question as to whether Judge Strickland had jurisdiction to grant a new trial was pending before and at this writing has not been decided by the Alabama Supreme Court. If the Alabama Supreme Court denies the peremptory writ, the matters sought to be reviewed here on the petition for certiorari would be moot.

ARGUMENT - REASONS WRIT SHOULD BE DENIED

At the outset it should be mentioned that paternity proceedings in Alabama are civil cases, not criminal cases, and are governed by the rules of civil procedure. Ward v. State, 42 Ala.App. 529, 170 So.2d 500; cert. den., 277 Ala. 703, 170 So.2d 504.

Petitioner contends he was denied his right to appeal from the judgment of the Juvenile Court of Mobile County in which he was adjudged to be the father of the children, because "court officials neglected to properly stamp said notices of appeal and process them by placing them in their respective files". (P.p.4). Our contention is that the Circuit Court of Mobile County, after full hearing, dismissed the attempted appeal, not because of some fault of the court officials, but because a notice of appeal was not filed in the Circuit Court within 10 days from the rendition of the Juvenile Court judgment.

The statute clearly provides that a notice of appeal must be filed in both the Juvenile Court and the Circuit Court within 10 days from the rendition of the judgment. At the hearing, the Circuit Court had before it the complete file. It showed that both notices of appeal were filed in the Juvenile Court (R.pp. 15-16) but that no notice was filed in the Circuit Court until the complete Juvenile Court file was sent over to the Circuit Court on July 16, 1970 (R.pp.2,3,4,127-128,133), which was more than 10 days after the judgment of June 30, 1970 (R.p.8; P.p.15).

The Register of the Circuit Court was under a duty to endorse the notice of appeal with the true date on which it was filed in the Circuit Court, and there is a presumption (which is evidence in itself) that the Register has performed that duty. Title 13, §214, Code of Alabama of 1940, as Recompiled in 1958; Gaines v. Harmon, 246 Ala. 307, 20 So.2d 503; Black v. Wilson, 281 Ala. 6, 198 So.2d 286. The trial judge noted that the only date appearing on the Circuit Court records as to the filing was July 16 (R.p.132). Entries on court records cannot be contradicted by parol evidence in

Alabama. Deslande and James v. Darrington's Heirs, 29 Ala. 92; Ex parte Lineville Nat. Bank, 217 Ala. 381, 116 So. 419.

The court also had before it the sworn motion to dismiss the appeal (R.pp.108-111) which stated:

> "* * * (N)o notice of appeal was filed in the Circuit Court of Mobile County, Alabama, until the complete Juvenile Court file was filed in the Circuit Court of Mobile County, Alabama, in Equity, Domestic Relations Division, with the Register of said Circuit Court, on July 16, 1970" (R.p.109).

The Circuit Court had ample evidence on which to base its judgment that the notice of appeal was not properly or timely filed (R.p.139).

The Supreme Court will not grant certiorari to review conflicting evidence or inferences drawn from it. General Talk. Pictures Corp. v. Western El. Co., 304 U.S. 175, 178, 82 L.Ed. 1273 (1938). Findings of the trial court, affirmed by the appellate court, based on conflicting evidence, will not be disturbed by the Supreme Court unless plainly without support. Alabama Power Co. v. Ickes, 302 U.S. 464, 477, 82 L.Ed. 374, 377, 58 S.Ct. 300 (1938).

In Davidson v. New Orleans, 96 U.S. 97, 24 L.Ed. 616, this Court defined "due process" and stated that alleged departures from the statute under which proceedings are held are not regulated or controlled by the Constitution of the United States.

During the course of the hearing before Judge McRae Dr. LeFlore's counsel remarked: "Now I might add this, that the issue is a constitutional issue because the Constitution of Alabama and the Constitution of the United States directly state that all persons are entitled to a trial by jury." (R.p.135).

However, paternity proceedings in Alabama are civil in nature and in Mobile County are tried on the equity side of the Court. A jury trial is authorized on the issue of paternity only on compliance with the statutory requirements. (Title 27, §12(6), Code of Alabama of 1940, as Recompiled in 1958 (Pocket Part); P.p.10)).

Moreover, no ruling on the point was urged of Judge McRae, and none was made. A federal question was not again referred to in the trial court, on the motion to modify, by assignment of error or in brief on appeal to the Alabama Supreme Court. The Alabama Supreme Court was not asked to decide a federal question, and that court consequently did not decide any federal question.

The federal question must not only have been presented to but must have been decided by the highest state court in order for the United States Supreme Court to review the judgment of the state court. Detroit City R. Co. v. Guthard, 114 U.S.133, 29 L.Ed. 118, 5 S.Ct. 811 (1885); Durley v. Mayo, 351 U.S. 277, 100 L.Ed. 1178, 76 S.Ct.806 (1956); Cardinale v. Louisiana, 394 U.S.437, 22 L.Ed. 2d. 398, 89 S.Ct. 1162 (1969).

On appeal to the Alabama Supreme Court Dr. LeFlore's contention was that the judgment of the Juvenile Court establishing paternity did not become final until July 14, and since the

notice of appeal reached the Circuit Court on July 16, it was filed within the 10 day period. The Alabama Supreme Court rejected this argument and held that the judgment was rendered and became final on June 30, 1970, and the notice of appeal was not filed in the Circuit Court within 10 days thereafter (P.pp.18,19).

There was not any contention made on appeal to the Alabama Supreme Court that a court official had failed to mark the notices of appeal filed, as now contended on this petition for certiorari.

Rule 23(1)(f), Rules of Supreme Court, states that the petition for certiorari must specify the place and manner in which the federal question sought to be reviewed was raised in the court below, the method of raising it, and the way in which it was passed upon by the court.

The petition in this case simply asserts that, "The jurisdiction of this Court is based on 28 U.S.C. Sec. 1257(3), petitioners having alleged below, and alleged herein the denial of due process, deprivation of rights, and immunities secured by the Fourteenth Amendment to the Constitution of the United States." (P.p.2). The petition does not specify the place or manner of raising the question or where it was passed upon by the court.

In Congress of Industrial Organizations v. McAdory, 325 U.S.472, 89 L.Ed.1741 (1945), there was a petition for certiorari to the Alabama Supreme Court, urging a deprivation of federal rights. However, the question was not passed on by the Circuit Court (of Jefferson County, Alabama), was not raised by assignment of error in the Alabama Supreme Court, and that court did not pass on the question in

its opinion. The Supreme Court noted that the Alabama Supreme Court will not consider errors which have not been assigned. That is still the law in Alabama. Greer v. Eye Foundation, Inc. 286 Ala. 63, 237 So.2d 456 (1970), Appendix, Code of Alabama of 1940, as Recompiled in 1958 (1971 Pocket Part, p.273); Albright Equipment Company v. Waddell, 284 Ala. 329, 224 So.2d 878 (1969).

In Walters v. St. Louis, 347 U.S. 231, 98 L.Ed. 660 (1954), a federal question was raised in the lower court, but the state court had not passed on the question. The Supreme Court therefore declined to review the state court judgment. See also Nelson v. County of Los Angeles, 362 U.S. 1, 4 L.Ed.2d 494, 80 S. Ct. 527 (1960).

After the Alabama Supreme Court had affirmed the judgment of the Circuit Court dismissing the appeal Dr. LeFlore filed a motion in the Juvenile Court for a new trial to retry the issue of paternity. The Juvenile Court entered an order granting a new trial (R. Brief, Appendix, A(1), infra, p.18. The State then filed a petition for prohibition and mandamus in the Alabama Supreme Court where it was docketed as 1 Div. 741, and that Court issued a show cause order to Judge Strickland (R. Brief, Appendix, A(II), infra, p.19. Judge Strickland filed an answer (R.Brief, Appendix, A(III) infra, p. 21. At this writing the Alabama Supreme Court has not finally decided whether the Juvenile Court has jurisdiction to grant such new trial. The question is pending before the Alabama Supreme Court. If the Alabama Supreme Court denies the peremptory writ in 1 Div. 741, the question sought to be reviewed here would be moot.

The Supreme Court will not review a state

court judgment where, subsequent to the rendition of the judgment, events have changed which would make the question raised moot. Hall v. Beals, 396 U.S.45, 24 L.Ed.2d 214, 90 S.Ct.200 (1969). Please see also Rice v. Sioux City Cemetery, 349 U.S.70, 99 L.Ed. 897, 75 S.Ct. 614 (1955).

CONCLUSION

Respondent respectfully contends, therefore, that the petition for writ of certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that three copies of the foregoing respondent's brief in opposition to petition for certiorari have been served on Charles S. Conley, Esquire, attorney for petitioner, at Executive House, 315 Bainbridge Street, Montgomery, Alabama 36104, by depositing the same in the United States Mail, at Mobile, Alabama, with first class postage prepaid, in an envelope addressed to him at his said post office address, this _____day of October, 1972.

_____

Of Counsel

APPENDIX

A(I). Juvenile Court Order Granting Motion for New Trial

CIRCUIT COURT, JUVENILE DIVISION IN AND FOR MOBILE COUNTY, ALABAMA

IN THE MATTER OF	*	
	*	
CASSIE BELL MOORE	*	
	*	
VS.	*	CASE NO. 13690
	*	
WALKER BECK LeFLORE	*	

ORDER AND JUDGMENT

DATE May 29, 1972

Complainant's motion to strike Defendant's motion for new trial taken under submission by Court on May 17, 1972, over the objection of the Complainant on the grounds that the Court had no jurisdiction to act on said motion for new trial. The Court grants a motion for new trial and denies the Complainant's motion to strike, and further orders that all payments as previously ordered in this Case for support will continue pending further order of Court. Case reset for hearing on August 1, 1972.

s/James T. Strickland
Judge, Circuit Court,
Juvenile Court Division

A(II). Order Granting Rule Nisi

THE STATE OF ALABAMA ----JUDICIAL DEPARTMENT

IN THE SUPREME COURT OF ALABAMA
OCTOBER TERM 1971-72

1 Div. 741

EX PARTE: STATE OF ALABAMA, EX REL. CASSIE BELL MOORE

(Re: State of Alabama, ex rel. Cassie Bell Moore v. Walker Beck LeFlore)

PETITION FOR PROHIBITION AND MANDAMUS

Comes the petitioner, the State of Alabama, ex rel Cassie Bell Moore, by attorney and the petition for writ of prohibition, mandamus, or other appropriate remedial writ, to the Honorable James T. Strickland, as Judge of the Circuit Court of Mobile County, Alabama, Juvenile Court Division, being argued and submitted and duly examined and understood by the Court,

IT IS CONSIDERED that the petitioner is entitled to the issuance of the Rule Nisi.

IT IS, THEREFORE, ORDERED that the Rule Nisi issue forthwith to the Honorable James T. Strickland, as Judge of the Circuit Court of Mobile County, Alabama, Juvenile Court Division, commanding and directing him to do the following in the matter of Cassie Bell Moore v. Walker Beck LeFlore, Case No. 13690, in the Circuit Court, Juvenile Division, in and for Mobile County, Alabama:

1. To set aside the order of May 17, 1972, taking the motion for new trial under

submission;

2. To set aside the order of May 29, 1972, granting the defendant, Walker Beck LeFlore, a new trial; and

3. To set aside the order of May 29, 1972, denying petitioner's motion to strike said motion for new trial;

and to enter an order granting the petitioner's motion to strike the motion of the defendant, Walker B. LeFlore, for a new trial from the records of said Court, or to appear before this Honorable Court within 30 days from the date of the writ and show cause why he should not be required to do so.

III. Judge Strickland's Answer to Rule Nisi

Ex parte STATE OF ALABAMA, ex rel. CASSIE BELL MOORE,	*	
Petitioner,	*	
VS.	*	IN THE SUPREME
THE HONORABLE JAMES T. STRICKLAND, as Judge of the Circuit Court of Mobile County, Alabama, and as ex officio Judge of the Juvenile Division of the Circuit Court of Mobile County, Alabama,	*	COURT OF ALABAMA.
	*	1 Div. No. 741
Respondent.	*	
In re: State of Alabama, ex rel. Cassie Bell Moore,	*	
Complainant,	*	
VS.	*	
Walker Beck LeFlore,	*	
Defendant.	*	
(Cassie Bell Moore, Complainant, Vs: Walker Beck LeFlore, Defendant, In the Juvenile Division of the Circuit Court of Mobile County, Alabama, Case No. 13690, formerly Case No. 13578)	*	

PETITION FOR PROHIBITION AND MANDAMUS

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF ALABAMA:

Comes now the Respondent, James T. Strickland, and for answer to the petition sets down and assigns the following, separately and severally:

1. That the action of the Respondent in granting the motion for new trial was not an improper exercise of judicial authority.

2. That the provisions of Tit. 27, Sec. 12(4), Code of Alabama of 1940, (As Last Amended), provides that the Court may at anytime subsequent to the rendition of the original order or judgment modify or vacate any such order or judgment in proceedings brought under this chapter on written petition duly filed by either party to the original complaint, which petition shall set out in reasonable detail the facts and circumstances allegedly warranting such modification or vacation.

3. The action of Respondent in granting the motion for new trial is consistent with Titl. 27 Sec. 12(4), Code of Alabama of 1940, (As Last Amended).

4. That Tit. 27 Sec. 12(4), Code of Alabama of 1940, (As Last Amended, provides that modification or vacation of the original judgment shall be permitted on a showing of substantially changed conditions subsequent to rendition of the original judgment.

Respectfully submitted,

S/ J. D. Quinlivan, Jr.
J. D. QUINLIVAN, JR.,
Attorney for Respondent